IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 419 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

ABDUL REHMAN USMANBHAI

Appearance:
MR KC SHAH, Ld.PUBLIC PROSECUTOR for appellant
NOTICE SERVED for Respondent No. 1
MR MAHENDRA K PATEL for Respondent No. 2
MR AK CHITNIS for Respondent No. 3

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/01/2002

ORAL JUDGEMENT

The State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure challenging the judgment and order of acquittal dated 20.2.1991 passed by the learned Metropolitan Magistrate, Court No.5, Ahmedabad, in Criminal Case No.1035 of 1985.

In that case, the present respondents were charged for committing offences punishable under Sections 420 and 114 of the Indian Penal Code.

2. According to the prosecution, the original accused Mohmadvashi Alamgiri who at the time of the trial was not available and was declared as absconding, who had stolen a Fiat Car bearing Regn. No. DEV-6766 from Delhi. The said car was thereafter brought to Ahmedabad and it was got re-registered at Ahmedabad with the Regional Transport Office (RTO). On 28th December 1983, the respondents knowing fully well that the car was stolen one and that it was bearing two different Registration Numbers, one of Delhi RTO and the other of Ahmedabad RTO, made a false representation to the complainant with a view to make him believe that the transaction was genuine and the effort was made to sell the car for Rs.40,000/-. He readily agreed to purchase the car and he, therefore, obtained the necessary loan from "F.A.O. O.N.G.C. Ahmedabad Project, Sabarmati". Ultimately the car was sold and the payment of Rs.40,000/- was made on 4th January 1984 by the complainant to the respondent no.1. The payment was made near Lucky Restaurant. At that time, the respondent no.1 showed the complainant the Registration Book wherein the name of absconding accused Mohmadvashi Alamgiri was written as the owner and his address was shown as Khanpur, Ahmedabad. When the payment was made to respondent no.1, respondent no.3 was present. The necessary formalities for transfer of the car with the RTO were complied with. According to the prosecution, it was respondent no.1 who had filed the T.T.O. Form as Mohmadvashi Alamgiri and it was attested by respondent no.2 and one Trikambhai as witness. The respondents thereafter took the complainant to the Oriental Insurance Company and got the Insurance transferred in the name of the complainant from that of the original policy holder Mohmadvashi Alamgiri and for that an amount of Rs.997/was paid to the Insurance Company. It is the case of the prosecution that all other necessary documents for transfer of the registration of the car and also of the vehicle bore the signature of Mohmadvashi Alamgiri which were in fact done by the present respondent no.1. After completion of the necessary formalities, the Registration Book was handed over to the complainant showing that the car was now of his ownership and that in the RTO also, the said vehicle was duly registered in his name.

Sometime thereafter, the Delhi police arrived in Ahmedabad and contacted the complainant and informed him that the car which he had purchased was a stolen car and

it was required as a muddamal in a criminal case pending in Delhi Court. He was also given a copy of the FIR lodged at Delhi with regard to the theft of the car. After the police seized the car, a receipt to that effect was passed on to the complainant. In view of this development, the complainant contacted the respondent no.3 who had acted as middle-man and told him that the Delhi police had taken away the car on the ground that it was a stolen car. Respondent no.3, therefore, arranged a meeting of the complainant with respondents nos.1 and 2 who assured the complainant that they would bring back the car from the police otherwise they would repay the amount to him. Unfortunately, neither of the things happened and, therefore, the complainant was constrained to file a criminal case in the Court.

On receipt of the complaint, the learned Magistrate passed an order for investigating into the matter under the provisions of Section 156(3) of the Code of Criminal Procedure and accordingly the investigation was carried out. At the initial stage, in the complaint, the respondent no.3 was shown as one of the accused by the complainant. However, the Investigating Officer, on completion of the investigation did not find it necessary to join him as one of the accused and therefore, dropped him. However, at the trial, an application was submitted by the complainant to implead respondent no.3 as one of the accused which was ultimately done by the trial Court after recording the evidence of the witnesses and passed an order to that effect under the provisions of Section 319 of the Code of Criminal Procedure. By virtue of that order, the respondent no.3 came to be added as accused no.3. In the Court of learned Magistrate, the chargesheet was filed for the offences under Sections 420 and 114 of the Indian Penal Code.

On receipt of the chargesheet, it was registered as Criminal Case No.1035 of 1985 in the Court of the Metropolitan Magistrate, Court No.5, Ahmedabad.

At the trial, the learned Magistrate framed the charge against the respondents for committing offences under Sections 420 and 114 of the Indian Penal Code. The charge is at Exh. 2 on the record of the case. The respondents denied the accusation and claimed to be tried.

During the trial, the prosecution examined five witnesses and also produced documentary evidence in support of its case.

On conclusion of the recording of the oral evidence, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure. Their defence appeared to be that of total denial. However, so far as respondent no.1 is concerned, he has stated that je acted as a broker and he had not committed any offence.

At the end of the trial, the learned Magistrate came to the conclusion that the prosecution had not been able to prove the case beyond reasonable doubt that the respondents with the aid of each other had sold the car bearing Registration No.DEV-6766 to the complainant with a view to dishonestly induce him to pay a sum of Rs.40,000/- to them fully knowing well that the car was a stolen one and they had no authority to sell that car to the complainant. He, therefore, vide judgment dated 20th February 1991 acquitted the respondents.

3. The State of Gujarat has now approached this Court by filing this appeal under Section 378 of the Code of Criminal Procedure challenging the impugned judgment and order of acquittal passed by the learned Magistrate against the respondents, as aforesaid.

4. At the hearing of this appeal, Mr.K.C.Shah, ld.Addl. Public Prosecutor for the State - appellant submitted that the learned Magistrate committed grave error in passing the order of acquittal in favour of the respondents inasmuch as he failed to appreciate that the prosecution had proved beyond any reasonable doubt the charges given against the respondents. According to him, there was reliable and cogent evidence on record to accept the case of the prosecution and to base the conviction of the respondents for offences made punishable under Sections 420 and 114 of the Indian Penal Code. He has therefore, submitted that this appeal deserves to be allowed and the judgment and order of acquittal passed by the learned Metropolitan Magistrate is required to be quashed and set aside.

So far as respondent no.1 is concerned, though he has been served, he is not represented by any Advocate. I have heard Mr.A.K.Chitnis, learned Counsel for respondent no.3. He has submitted that this being an appeal against acquittal, this Court should be slow to interfere with the judgment and order of acquittal passed by the trial Court. According to him, looking to the statements on record, it cannot be said that the judgment of the learned Magistrate is perverse or that it is based on evidence which is not there on record. He has,

therefore, submitted that the appeal of the State has no merit and it should be dismissed.

5. The learned Counsel have taken me through the entire record of the case and I have also, with a view to appreciate the evidence afresh, considered it carefully. The prosecution has placed reliance on the statement of the complainant Rooplal Ramjidas as PW2-Exh.13. According to this witness, at the relevant time, he was working as a Deputy Secretary in Oil and Natural Commission. At that time, ONGC advanced loans to its employees to enable them to purchase transport vehicles. In view thereof, the complainant had applied for an amount of Rs.40,000/- which was duly received by him. He has further stated that while he was looking out for a car, he was contacted by respondent no.3 who, at the relevant time, was working as a driver in ONGC. The respondent no.3 assured the complainant that he would get him a good car at a lesser price and on the same afternoon, he introduced one Davoodbhai - respondent no.2 as a broker of the car. This happened on 28th December 1983. Subsequently, respondent no.2 showed him a car bearing Regn.No. GAO-1239 and he promised that he would get the car for the complainant at a reasonable price. On 30th December 1983, the respondent no.3 was informed by respondent no.2 that the owner was expecting a sum of Rs.40,000/- towards the sale of the car. On the next day, i.e. 31st December 1983, the complainant along with one Trikambhai and respondent no.3 came near Lucky Restaurant. The respondent no.2 also arrived there along with the person who was introduced to the complainant as the owner of the car. His name was Mohamadvasi. Since the transaction almost got finalised, the complainant paid Rs.500/- as advance to the owner of the car and he promised to pay the balance amount within two-three days. He has further stated in his evidence that on 4th January 1984, he had gone to the Lucky Restaurant along with two other persons. He was shown the Registration Book of the car in which the name of Mohamadvashi Alamgiri was shown as the owner of the car and his address was stated as Khanur, Ahmedabad. The respondents nos.2 and 3 showed the respondent no.1 as the owner of the car, i.e. Mohamadvashi Alamgiri. Since the complainant found everything straight, he parted with the amount of Rs.40,000/- in favour of respondent no.1. All the three respondents were present at that time at that place. After payment of the amount, the respondents and in particular, respondent no.2 and the complainant helped him in completing all the formalities required for transfer of the vehicle and also for transferring the Insurance Policy. This witness has further stated that

at the end of the formalities, the Registration Book was handed over to him wherein the car was shown to be standing in his name. He has further stated that subsequently, the police from Delhi came to him and informed him that the car which he had purchased was a stolen car and he was also given a coy of the FIR which was lodged in connection with the theft and the custody of the muddamal vehicle was taken. He has further stated that in view of this development, he again contacted respondent no.3 who arranged his meeting with respondents nos.1 and 2. The respondents nos.1 and 2 assured him that they would see that either the car is brought back to Ahmedabad and given him or the amount is repaid.

In the cross-examination, suggestions were put to him that the respondent no.1 had not signed any documents, that the respondent no.1 had intimated him in advance that the car was standing in the name of Mohamadvashi and that he knew that the respondent no.1 was not Mohamadvashi etc., but the same has been denied by this witness. He has also denied the suggestion put to him that he had lodged false complaint because he felt that he would not be able to have the car back.

Similarly, the prosecution has placed reliance on the evidence of Trikambhai and others who, however, deposed on the same lines as that of the complainant and their evidence does not take the case of prosecution any further. I, therefore, do not propose to discuss it in detail.

6. From the evidence that has come on record, it clearly appears that the transaction entered into between the respondent no.1 and the complainant was not a genuine one. In other words, the car in question was not of the ownership of Mohamadvashi. However, so far as the present respondents are concerned, it is difficult to say that they knew from the beginning that the car in question was a stolen car and that the original accused Mohamadvashi Alamgiri had brought it to Ahmedabad with a view to sell it. So far as Mohamadvashi is concerned, he is not found and he is still absconding. The evidence led by the prosecution does not successfully prove that any of the respondents knew from the very beginning that Mohamadvashi was not the real owner of the car and that he or anyone else had stolen the car from Delhi and had brought to Ahmedabad for selling. If that link is missing, it is difficult to hold that any of the respondents guilty of committing the offence under Section 420 of the Indian Penal Code.

It may be noted that the allegation against the respondent no.1 is that he had forged the signature of Mohamadvashi in each and every document. The prosecution has, however, not taken any care to seek the opinion of handwriting expert with a view to ascertain or find out whether in fact the forged signatures were made by respondent no.1. In absence of any such material, the respondent no.1 cannot be saddled with the liability of forging the signatures of absconding accused Mohamadvashi and he, therefore, cannot be said to have made any dishonest intention to induce the complainant to part with sum of Rs.40,000/- and thereby committed the offence of cheating. It may also be noted here that no charge of forgery has been levelled against the respondent no.1 and he has not been afforded adequate opportunity to defend himself for and against the offence of forgery. So far as the respondents nos.2 and 3 are concerned, their guilt is totally dependant on that of respondent no.1. However, if the prosecution does not establish the charge of cheating against respondent no.1, there is no scope for him to hold respondents nos.2 and 3 guilty of committing that offence.

7. Taking the overall view of the oral as well as documentary evidence on record, I find that the prosecution has not conclusively proved the allegations levelled against either respondent no.1 or respondents nos. 2nd and 3. In view thereof, I am of the opinion that the learned Magistrate was right in giving them benefit of doubt. I, therefore, see no reason to interfere with this appeal and the appeal deserves to be dismissed. The appeal is, therefore, ordered to be dismissed.

(Akshay H.Mehta, J.)

Sreeram.